



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

via FEDERAL EXPRESS

Robert W. Thomson, Esq.
Babst, Calland, Clements & Zomnir
2 Gateway Center
Pittsburgh, PA 15222

September 13, 2006

Dear Mr. Thomson:

I have enclosed the settlement agreement for the Powerex alleged RCRA violations at its Youngwood, Pennsylvania facility. This agreement reflects the changes indicated in my redline/strikeout version I sent to you on September 11 of this week

EPA would like to file the signed agreement by September 29. Once the agreement is signed by your client, if you could send it back to me by overnight delivery so I receive it a few days in advance of that date, I would greatly appreciate it.

Please contact me at (215) 814-2640 if you have any further questions on this matter.

Again, thanks very much in helping bring this matter to a positive resolution.

Sincerely,

A handwritten signature in cursive script that reads "Jim Heenehan".

Jim Heenehan
Sr. Assistant Regional Counsel

cc: S. Peterson (3WC31)



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**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In Re:

**Powerex, Inc.
200 East Hillis Street
Youngwood, Pennsylvania 15697**

RESPONDENT

Docket No. RCRA-03-2006-0265

CONSENT AGREEMENT

I. PRELIMINARY STATEMENT

1. This Consent Agreement ("CA") is entered into by the Associate Director, Waste and Chemicals Management Division, United States Environmental Protection Agency, Region III ("Complainant" or "EPA"), and Powerex, Inc. ("Powerex" or Respondent"), pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22. Pursuant to Section 22.13(b) of the Consolidated Rules of Practice, this CA and the attached Final Order ("FO", hereinafter jointly referred to as the "CAFO") both commence and conclude the above-captioned administrative proceeding against Respondent, brought under Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6928(a) and (g), for alleged violations of RCRA at Respondent's facility at 200 East Hillis Street, Youngwood, Pennsylvania (the "Facility").

2. On January 30, 1986, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, Pennsylvania was granted final authorization to administer a state hazardous waste management program ("PaHWR") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§6921-6939e. A revised set of PaHWR was authorized by EPA on September 26, 2000, and became effective on November 27, 2000. A more recent revised set of PaHWR was authorized by EPA on January 20, 2004, and became effective on March 22, 2004. The provisions of the authorized PaHWR currently set forth at 25 Pa. Code Ch. 260a-266a, 266b, and 268a-270a, through such authorization, have become requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).
3. The factual allegations and legal conclusions in this CA are based on provisions of the PaHWR in effect at the time of the violations alleged herein. The PaHWR incorporates by reference certain federal hazardous waste management regulations that were in effect as of May 1, 1999 for the November 27, 2000 PaHWR authorization, and in effect on September 25, 2003 for the March 22, 2004 PaHWR authorization. The 2004 authorized PaHWR do not make any changes to the November 27, 2000 PaHWR that are relevant to the violations set forth herein.
4. On July 20, 2006, EPA sent a letter to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), giving Pennsylvania prior notice of the initiation of this action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

5. This CA is entered into by Complainant and Respondent to address the violations alleged in the Findings of Fact, as set forth below.
6. For the purposes of this proceeding, Respondent admits the jurisdictional allegations of this CA, as set forth above.
7. For the purposes of this proceeding only, Respondent neither admits nor denies the Findings of Fact contained in this CA, except as provided in Paragraph 6, above.
8. For the purposes of this proceeding only, Respondent neither admits nor denies the Conclusions of Law contained in this CA, except as provided in Paragraph 6, above.
9. For the purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations herein or to appeal the FO attached hereto.
10. The settlement agreed to by the parties in this CA reflects the desire of the parties to resolve this matter without litigation.
11. Respondent consents to the issuance of this CA and to the attached FO and agrees to comply with their terms. Respondent agrees not to contest Complainant's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
12. Each party shall bear its own costs and attorney's fees in connection with this proceeding.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

13. This section represents the Findings of Fact and Conclusions of Law made by Complainant in this matter. As set forth in Paragraphs 7 and 8, above, Respondent

neither admits nor denies these Findings of Fact and Conclusions of Law, but agrees to this settlement to avoid further litigation, as set forth in Paragraph 10, above.

14. Respondent is, and was at the time of the violations alleged herein, a Delaware corporation and a "person" as defined in Section 1004(15) of RCRA, 42 U.S.C. Section 6903(15), and as defined in 25 Pa. Code § 260a.10.
15. Respondent is, and was at the time of the violations alleged herein, the "owner" and "operator," as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, of a facility located at 200 East Hillis Street, Youngwood, Pennsylvania (the "Facility").
16. Respondent's Facility includes a 1,000 gallon waste solvent above-ground "tank" as that term is defined at 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1 and/or as defined in 25 Pa. Code § 260a.10, which is subject to the requirements of 40 C.F.R. Part 264, Subpart J, as incorporated by reference into 25 Pa. Code § 264a.1.
17. On December 14, 2004, representatives from EPA and the Pennsylvania Department of Environmental Protection ("PADEP") conducted an inspection of the Facility (the "December 2004 Inspection"). At the time of the December 14, 2004 Inspection, and at all times relevant to this CAFO, Respondent was a "generator" of "hazardous waste" at the Facility as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1.
18. At the time of the December 2004 Inspection, and at all times relevant to this CAFO, Respondent was engaged in "storage" of "hazardous waste" at the Facility, as those terms

are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1 and/or as defined in 25 Pa. Code § 260a.10.

19. Pursuant to 40 C.F.R. § 260.10, as incorporated by reference in 25 Pa. Code § 260a.1, “hazardous waste” means “a hazardous waste as defined in [40 C.F.R. § 261.3]”
20. 40 C.F.R. § 261.3(a), as incorporated by reference in 25 Pa. Code § 261a.1, provides, in relevant part:
 - (a) A solid waste, as defined in [40 C.F.R.] § 261.2, is a hazardous waste if:
 - (1) It is not excluded from regulation as a hazardous waste under § 261.4(b); and
 - (2) It meets any of the following criteria:
 - (i) It exhibits any of the characteristics of hazardous waste identified in [40 C.F.R. §§ 261.20-.24]. . . .
 - (ii) It is listed in [40 C.F.R. §§ 261.30-.38].
21. At the time of the December 2004 Inspection and at all times relevant to this CAFO, Respondent stored mixed solvent wastes generated at the Facility in the 1,000 gallon waste solvent above-ground storage tank at the Facility. The mixed solvents included methanol, acetone, 2-propanol, n-butyl acetate, and xylene with EPA Hazardous Waste codes D001, F003, and F005.
22. The wastes identified above in Paragraph 21 exhibit the characteristics of hazardous waste set forth in 40 C.F.R. §§ 261.20-.24, and are therefore, are hazardous wastes as that term is defined in 40 C.F.R. § 261.3(a), as incorporated by reference in 25 Pa. Code § 261a.1.

COUNT I
(Operating a TSD Without a Permit or Interim Status)

23. Pursuant to Section 3005(a) and (e) of RCRA, 42 U.S.C. § 6925(a) and (e), and 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, no person may own or operate a facility for the treatment, storage or disposal of hazardous waste without first obtaining a permit or interim status for such facility.
24. Respondent has never been issued a permit, pursuant to Section 3005(a) of RCRA, 42 U.S.C. § 6925(a), or 40 C.F.R. Part 270, as incorporated by reference into 25 Pa. Code § 270a.1, for the storage of hazardous waste at the Facility, and did not have interim status pursuant to Section 3005(e) of RCRA, 42 U.S.C. § 6925(e), or 40 C.F.R. § 270.70, as incorporated by reference into 25 Pa. Code § 270a.1, at any time.
25. Pursuant to 40 C.F.R. § 262.34, as incorporated by reference into 25 Pa. Code § 262a.10, generators of hazardous waste who accumulate hazardous waste on-site for less than 90 days are exempt from the requirement to obtain a permit for such accumulation, so long as the hazardous waste is stored in accordance with a number of conditions set forth in that section, including, *inter alia*:
- a. Pursuant to 40 C.F.R. § 262.34(a)(3), as incorporated by reference into 25 Pa. Code § 262a.10, each container and tank must be clearly marked with the words "Hazardous Waste"; and
 - b. Pursuant to 40 C.F.R. § 262.34(a)(4) and 40 C.F.R. § 265.16(c), as incorporated by reference into 25 Pa. Code § 262a.10, facility personnel must take part in an annual review of the initial training required by 40 C.F.R. § 265.16(a).

26. At the time of the December 2004 Inspection, Respondent was not in compliance with the conditions for temporary accumulation of hazardous waste by a generator pursuant to 40 C.F.R. § 262.34, as incorporated by reference into 25 Pa. Code § 262a.10, described in Paragraph 25, above, and therefore did not qualify for the exemption from the permitting/interim status requirements provided by such section. The specific reasons why Respondent did not qualify for the exemption include the following:

- a. Respondent stored hazardous waste at the Facility in a 1,000 gallon waste solvent above-ground storage tank in a less-than-90-day storage area at the Facility that did not have the words "hazardous waste" on it as per the exemption requirement of 40 C.F.R. § 262.34(a)(3), as incorporated by reference into 25 Pa. Code § 262a.10; and
- b. For the years 2001, 2002, 2003, and 2004, Respondent's facility personnel did not receive the annual review of the initial training required by 40 C.F.R. § 265.16(a) as incorporated by reference into 25 Pa. Code § 265a.1.

27. As of the time of the December 2004 Inspection, Respondent was storing hazardous waste at the Facility without a permit, interim status or valid exemption, in violation of 40 C.F.R. § 270.1(b), as incorporated by reference into 25 Pa. Code § 270a.1, and Section 3005(a) of RCRA, 42 U.S.C. § 6925(a).

COUNT II
(Failure to Maintain Written Records of Inspections)

28. Pursuant to 40 C.F.R. § 264.195(d), as incorporated by reference into 25 Pa. Code § 264a.1, owners and operators of tanks shall document in the facility's operating record a daily inspection of, *inter alia*, the above ground portions of a tank system to detect corrosion or releases of hazardous waste and the construction materials and the area immediately surrounding the externally accessible portion of the tank system to detect erosion or signs of releases of hazardous waste.
29. As of the time of the December 2004 Inspection, Respondent had not documented in the Facility's operating record the daily inspections of the Facility's 1,000 gallon waste solvent above-ground storage tank as required by 40 C.F.R. § 264.195(d), as incorporated by reference into 25 Pa. Code § 264a.1.
30. As of the time of the December 2004 Inspection, Respondent had violated 40 C.F.R. § 264.195(d), as incorporated by reference into 25 Pa. Code § 264a.1, by not documenting in the Facility's operating record the daily inspections of the Facility's 1,000 gallon waste solvent above-ground storage tank.

COUNT III
(Failure to Mark Ball Float Valves and Open-Ended Pump-Out Lines)

31. Pursuant to 40 C.F.R. § 264.1050(d), as incorporated by reference into 25 Pa. Code § 264a.1, owners and operators of each piece of equipment which is subject to the Air Emission Standards for Equipment Leaks (40 C.F.R. Part 264, Subpart BB), shall mark

the equipment in such a manner that it can be distinguished readily from other pieces of equipment.

32. As provided in 40 C.F.R. § 264.1051 which is incorporated by reference into 25 Pa. Code § 264a.1, for the purposes of 40 C.F.R. Part 264, Subpart BB, equipment is defined as “each valve, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, or flange or other connector, and any control devices or systems required by [40 C.F.R. Part 264, Subpart AA].”
33. 40 C.F.R. § 264.1050(b), as incorporated by reference into 25 Pa. Code § 264a.1, specifies that, with exceptions not relevant here, equipment subject to the 40 C.F.R. Part 264, Subpart BB Air Emission requirements is equipment that contains or contacts hazardous wastes with organic concentrations of at least 10% by weight that are managed in, *inter alia*, a unit subject to the permitting requirements of 40 C.F.R. Part 270, or a unit that is exempt from permitting under the provisions of 40 C.F.R. § 262.34(a) [e.g., a “90-day” tank or container] and is not a recycling unit under the provisions of 40 C.F.R. § 261.6.
34. At the time of the December 2004 Inspection, Respondent’s 1,000 gallon waste solvent above-ground storage tank and associated piping contained or contacted hazardous wastes with organic concentrations of at least 10% by weight and was managed as a unit subject to the permitting requirements of 40 C.F.R. Part 270.
35. Respondent’s 1,000 gallon waste solvent above-ground storage tank contains associated equipment that is in contact with hazardous wastes with organic concentrations of at least

- 10% by weight. This equipment consists of two ball float valves and two open-ended pump-out lines.
36. Respondent's two ball float valves and two open-ended pump-out lines associated with the 1,000 gallon waste solvent above-ground storage tank are "equipment" subject to the 40 C.F.R. Part 264, Subpart BB Air Emission requirements.
37. At the time of the December 2004 Inspection, Respondent's two ball float valves and two open-ended pump-out lines associated with the 1,000 gallon waste solvent above-ground storage tank were not marked in such a manner that they could be distinguished readily from other pieces of equipment at the Facility, as required by 40 C.F.R. § 264.1050(d), as incorporated by reference into 25 Pa. Code § 264a.1.
38. Respondent's failure to mark the two ball float valves and two open-ended pump-out lines associated with the 1,000 gallon waste solvent above-ground storage tank in such a manner that they could be distinguished readily from other pieces of equipment was a violation of 40 C.F.R. § 264.1050(d) as incorporated by reference into 25 Pa. Code § 264a.1.

COUNT IV
(Failure to Monitor Ball Float Valves)

39. Pursuant to 40 C.F.R. § 264.1057(a), as incorporated by reference into 25 Pa. Code § 264a.1, owners and operators of each piece of equipment which is subject to the Air Emission Standards for Equipment Leaks (40 C.F.R. Part 264, Subpart BB) with a valve in gas/vapor or light liquid service shall monitor such valve monthly to detect leaks using

methods specified in 40 C.F.R. § 264.1063(b) and shall comply with 40 C.F.R. § 264.1057(b) through (e), with exceptions not relevant here.

40. The leak detection methods specified in 40 C.F.R. § 264.1063(b) require that:
 - a. Monitoring shall comply with Reference Method 21 in 40 C.F.R. Part 60;
 - b. The detection instrument shall meet the performance criteria of Method 21;
 - c. The instrument shall be calibrated before use on each day of its use by the procedures specified in Reference Method 21;
 - d. Calibration gases shall be:
 - i. Zero air (less than 10 ppm of hydrocarbon in the air);
 - ii. A mixture of methane or n-hexane and air at a concentration of approximately, but less than, 10,000 ppm methane or n-hexane; and
 - e. The instrument probe shall be traversed around all potential leak interfaces as close to the interface as possible, as described in Reference Method 21.
41. As provided in 40 C.F.R. § 264.1051 which is incorporated by reference into 25 Pa. Code § 264a.1, for the purposes of 40 C.F.R. Part 264, Subpart BB, the term "in light liquid service" means that the piece of equipment contains or contacts a waste stream where the vapor pressure of one or more of the organic components in the stream is greater than 0.3 kilopascals ("kPa") at 20 degrees centigrade, the total concentration of the pure organic components having a vapor pressure greater than 0.3 kilopascals (kPa) at 20 degrees centigrade is equal to or greater than 20 percent by weight, and the fluid is a liquid at operating conditions.

42. The vapor pressure of the waste solvents in Respondent's 1,000 gallon waste solvent above-ground storage tank at 25 degrees centigrade is 12.54 kPa, which is greater than 0.3 kPa at 20 degrees centigrade.
43. Respondent's two ball float valves associated with the 1,000 gallon waste solvent above-ground storage tank are valves in light liquid service which are subject to the monthly monitoring requirements of 40 C.F.R. § 264.1057(a).
44. For the years 2001, 2002, 2003 and 2004, Respondent had not conducted monthly monitoring of the two ball float valves associated with the 1,000 gallon waste solvent above-ground storage tank to detect leaks with methods specified in 40 C.F.R. § 264.1063(b) as required by 40 C.F.R. § 264.1057(a), as incorporated by reference into 25 Pa. Code § 264a.1.
45. Respondent's failure to conduct monthly monitoring of the two ball float valves associated with the 1,000 gallon waste solvent above-ground storage tank to detect leaks with methods specified in 40 C.F.R. § 264.1063(b) was a violation of 40 C.F.R. § 264.1057(a), as incorporated by reference into 25 Pa. Code § 264a.1.

COUNT V

(Failure to Maintain a Written Inventory of the Two Ball Float Valves and Two Open-Ended Pump-Out Lines)

46. Pursuant to 40 C.F.R. § 264.1064(b)(1), as incorporated by reference into 25 Pa. Code § 264a.1, the owners and operators of each piece of equipment which is subject to the Air

Emission Standards for Equipment Leaks (40 C.F.R. Part 264, Subpart BB), shall record the following information about such equipment in the facility operating record:

- a. Equipment identification number and hazardous waste management unit identification;
 - b. Approximate locations within the facility;
 - c. Type of equipment;
 - d. Percent-by-weight total organics in the hazardous waste stream at the equipment;
 - e. Hazardous waste state at the equipment (*e.g.*, gas/vapor or liquid); and
 - f. Method of compliance with the standard.
47. Respondent's two ball float valves and two open-ended pump-out lines associated with the 1,000 gallon waste solvent above-ground storage tank are equipment subject to the Subpart BB Air Emission requirements.
48. As of the time of the December 2004 Inspection, Respondent had not recorded the information required by 40 C.F.R. § 264.1064(b)(1), as incorporated by reference into 25 Pa. Code § 264a.1, for the two ball float valves and two open-ended pump-out lines associated with the 1,000 gallon waste solvent above-ground storage tank into the facility operating record.
49. Respondent's failure to record information set forth in 40 C.F.R. § 264.1064(b)(1) concerning the two ball float valves and two open-ended pump-out lines associated with the 1,000 gallon waste solvent above-ground storage tank was a violation of 40 C.F.R. § 264.1064(b)(1) as incorporated by reference into 25 Pa. Code § 264a.1.

COUNT VI

(Failure to Maintain Level 1 or level 2 Air Emission Controls for the 1000 Gallon Waste Solvent Above-Ground Storage Tank)

50. Pursuant to 40 C.F.R. § 264.1080, as incorporated by reference into 25 Pa. Code § 264a.1, owners and operators of tanks storing hazardous waste and subject to the requirements of 40 C.F.R. Part 264, Subpart J, are required, with certain exceptions not relevant here, to comply with the Air Emission Standards for Tanks, Surface Impoundments, and Containers set forth in 40 C.F.R. Part 264, Subpart CC (40 C.F.R. §§ 264.1080 through .1091).
51. Pursuant to 40 C.F.R. § 264.1084(b)(1), owners and operators of tanks referenced in 40 C.F.R. § 264.1082(b) that manage hazardous wastes that meets all the specifications of 40 C.F.R. § 264.1084(b)(1)(i) through (b)(1)(iii) must control air pollutant emissions from such tanks in accordance with either the Tank Level 1 controls specified in 40 C.F.R. § 264.1084(c) or Tank Level 2 controls specified in 40 C.F.R. § 264.1084(d).
52. From 1990 until April 2004, Respondent's 1,000 gallon waste solvent above-ground storage tank and the waste solvents stored by Respondent in this Tank met the tank specifications set forth in 264.1084(b)(1)(i), (ii) and (iii), and, therefore, Respondent was required to control the air emissions from this tank in accordance with either the Tank Level 1 or 2 controls specified in 40 C.F.R. § 264.1084(c) or (d).
53. The Tank Level 1 controls required by 40 C.F.R. § 264.1084(c) include the requirement set forth at 40 C.F.R. § 264.1084(c)(2)(i) that the tank be equipped with a fixed roof

designed to form a continuous barrier over the entire surface area of the hazardous waste in the tank.

54. From at least January 15, 2003 until April 2004, the roof of Respondent's 1,000 gallon waste solvent above-ground storage tank did not form a continuous barrier over the entire surface area of the hazardous waste in the tank as necessary to comply with the Tank Level 1 controls specified in § 264.1084(c).
55. The Tank Level 2 controls required by 40 C.F.R. § 264.1084(d) require one of the following five types of tanks:
- a. A tank equipped with an internal floating roof in accordance with the requirements set forth in § 264.1084(e);
 - b. A tank equipped with an exterior floating roof in accordance with the requirements set forth in § 264.1084(f);
 - c. A tank vented through a closed-vent system to a control device in accordance with the requirements set forth in § 264.1084(g);
 - d. A pressure tank designed and operated in accordance with the requirements set forth in § 264.1084(h); or
 - e. A tank located inside an enclosure that is vented through a closed-vent system to an enclosed combustion control device in accordance with the requirements set forth in § 264.1084(i).
56. From at least January 15, 2003 until April 2004, Respondent's 1,000 gallon waste solvent above-ground storage tank did not contain any of the Tank Level 2 controls specified in 40 C.F.R. § 264.1084(d).

57. Respondent's failure to ensure that the 1,000 gallon waste solvent above-ground storage tank included either the Tank Level 1 air emission controls set forth in 40 C.F.R. § 264.1084(c) or Tank Level 2 air emission controls set forth in 40 C.F.R. § 264.1084(d) from at least January 15, 2003 until April 2004, was a violation of 40 C.F.R. § 264.1084(b)(1), as incorporated by reference into 25 Pa. Code § 264a.1.

COUNT VII

(Failure to Provide Hazardous Waste Refresher Training to Its Employees)

58. Pursuant to 40 C.F.R. § 264.16(a), as incorporated by reference into 25 Pa. Code § 264a.1, owners and operators shall ensure that, *inter alia*, facility personnel "successfully complete a program of classroom instruction or on-the-job training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of [40 C.F.R. Part 264]."
59. Pursuant to 40 C.F.R. § 264.16(c), as incorporated by reference into 25 Pa. Code § 264a.1, owners and operators shall ensure that, *inter alia*, facility personnel "take part in an annual review of the initial training required in [40 C.F.R. § 264.16(a)]."
60. Respondent had personnel at its Facility who were required to have received annual refresher training for the years 2001, 2002, 2003, and 2004.
61. Respondent failed to provide annual refresher training as required by 40 C.F.R. § 264.16(c) to its facility personnel for the years of 2001, 2002, 2003, 2004, and, therefore, committed four violations of 40 C.F.R. § 264.16(c), as incorporated by reference into 25 Pa. Code § 264a.1.

COUNT VIII
(Failure to Identify Hazardous Waste Code F008 on LDR Notification Forms)

62. Pursuant to 40 C.F.R. § 268.9(a), as incorporated by reference into 25 Pa. Code § 268a.1, the initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standard for such waste under 40 C.F.R. part 268, Subpart D.
63. Pursuant to 40 C.F.R. § 268.7(a)(1), as incorporated by reference into 25 Pa. Code § 268a.1, a generator of hazardous waste must determine if the waste has to be treated before it can be land disposed.
64. Pursuant to 40 C.F.R. § 268.7(a)(2), as incorporated by reference into 25 Pa. Code § 268a.1, if a waste does not meet the specified treatment standards identified in 40 C.F.R. § 268.7(a)(1), the generator of such waste must give to each treatment or storage facility receiving the waste, with the initial shipment of such waste, a one-time notification of, *inter alia*, the EPA Hazardous Waste Number (waste code) applicable to the waste.
65. Pursuant to 40 C.F.R. § 268.7(a)(3), as incorporated by reference into 25 Pa. Code § 268a.1, if a waste does meet the specified treatment standards identified in 40 C.F.R. § 268.7(a)(1), a generator of such waste must give to each treatment or storage facility receiving the waste, with the initial shipment of such waste, a one-time notification of, *inter alia*, the EPA Hazardous Waste Number (waste code) applicable to the waste.

66. At all times relevant to this CAFO, Respondent's Facility involved a cyanide/gold plating operation which utilized filters to remove plating sludge/particulate from process baths. The filters are removed from the baths when spent and placed in 55-gallon drums for on-site storage and subsequent off-site disposal. The filters accumulate plating bath residues from plating baths from electroplating operations where cyanides are used in the process. Such plating bath residues from electroplating operations where cyanides are used in the process carry the EPA Hazardous Waste Code of F008 as set forth in 40 C.F.R. § 261.3, which is incorporated by reference into 25 Pa. Code § 261a.1.
67. The filters that accumulate plating bath residues from plating baths from electroplating operations at Respondent's Facility are both "solid wastes" and "hazardous wastes" as those terms are defined in 40 C.F.R. § 260.10, as incorporated by reference into 25 Pa. Code § 260a.1.
68. Respondent failed to determine that the filters that accumulate plating bath residues from plating baths from electroplating operations at Respondent's Facility carry the EPA Hazardous Waste Code of F008, as required by 40 C.F.R. § 268.9(a).
69. On three occasions in 2003-04, Respondent sent filters identified above offsite for treatment or disposal to a treatment facility without having previously notified such facility that the filters carried the EPA Hazardous Waste Code of F008, as required by 40 C.F.R. § 268.7(a)(2) or (3), as incorporated by reference into 25 Pa. Code § 268a.1.
70. Respondent violated 40 C.F.R. § 268.7(a)(2) or (3), as incorporated by reference into 25 Pa. Code § 268a.1, by failing to notify the receiving facility that the hazardous waste filters identified above carried the EPA Hazardous Waste Code of F008, and violated 40

C.F.R. § 268.9(a), as incorporated by reference into 25 Pa. Code § 268a.1, by failing to determine that the filters that accumulate plating bath residues from plating baths from electroplating operations at Respondent's Facility carry the EPA Hazardous Waste Code of F008.

III. CIVIL PENALTIES

71. In settlement of EPA's claims for civil monetary penalties assessable for the violations alleged in this CA, Respondent consents to the assessment of a civil penalty in the amount of THIRTY THOUSAND DOLLARS (\$30,000.00), which Respondent agrees to pay in accordance with the terms set forth below. Such civil penalty amount shall become due and payable immediately upon Respondent's receipt of a true and correct signed copy of this CAFO. In order to avoid the assessment of interest in connection with such civil penalty as described in this CAFO, Respondent must pay the civil penalty no later than thirty (30) calendar days after the date on which a copy of this CAFO is mailed or hand-delivered to Respondent.
72. The aforesaid settlement amount was based upon Complainant's consideration of a number of factors, including, but not limited to the statutory factors set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3), *i.e.*, the seriousness of Respondent's violations and the good faith efforts by Respondent to comply with the applicable requirements of RCRA and the authorized PaHWR, and the *RCRA Civil Penalty Policy* (October 1990). EPA has also considered the *Adjustments of Civil Monetary Penalties for Inflation*, as set forth in 40 C.F.R. Part 19, and the September 21, 2004 memorandum

by Acting EPA Assistant Administrator Thomas V. Skinner entitled, *Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule* ("2004 Skinner Memorandum"). 40 C.F.R. Part 19 and the 2004 Skinner Memorandum specify that for violations occurring after January 30, 1997, statutory penalties and penalties under the RCRA Civil Penalty Policy for, *inter alia*, RCRA Subtitle C violations, were increased 10% above the maximum amount to account for inflation, and statutory penalties for, *inter alia*, RCRA Subtitle C violations occurring after March 15, 2004, were increased by an additional 17.23% above the maximum amount to account for inflation.

73. Payment of the civil penalty amount required under the terms of Paragraph 71, above, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall reference its name and address and the Docket Number of this action (RCCA-03-2006-0265);
 - b. All checks shall be made payable to **"United States Treasury"**;
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
P.O. Box 371099M
Pittsburgh, Pennsylvania 15251;

- d. All payments made by check and sent by overnight delivery service shall be addressed and sent to:

Mellon Bank Client Service Center
ATTN: Shift Supervisor
Lockbox 371099M Account 9109125
500 Ross Street
Pittsburgh, PA 15262-0001;

- e. All electronic wire transfer payments shall be directed to:

Mellon Bank, Pittsburgh, PA
Account 9109125
ABA 043000261
22 Morrow Drive
Pittsburgh, PA 15235

SWIFT Address MELNUS3P – (SWIFT address is only needed on international transfers).

- f. The Mellon Customer Service phone number for the above payments is 412-234-5805.

- g. At the same time that any payment is made, Respondent shall mail copies of any corresponding check, or written notification confirming any electronic wire transfer, to:

Ms. Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and to

James Heenehan
Sr. Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029.

74. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the Compliance Order requirements set forth in Paragraphs 82 and 83 of this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.
75. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. §13.11(a).
76. The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. §13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the

payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.

77. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. §13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
78. The Respondent agrees not to deduct for federal tax purposes the civil monetary penalty specified in this CAFO.

IV. EFFECT OF SETTLEMENT

79. Payment of the penalty specified in Paragraph 71, above, in the manner set forth in Paragraph 75, above, and payment of any applicable interest, handling costs and/or late payment charges, as set forth in Paragraphs 74 through 77, above, shall constitute full and final satisfaction of all civil claims for penalties which Complainant may have under Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for the specific violations alleged in Section II ("Findings of Fact and Conclusions of Law"), above. Compliance with this CAFO shall not be a defense to any action commenced at any time for any other violation of the federal laws and regulations administered by EPA.

V. OTHER APPLICABLE LAWS

80. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.

VI. CERTIFICATION OF COMPLIANCE

81. Respondent certifies to Complainant, upon investigation, to the best of its knowledge and belief, that Respondent, in its capacity as the owner and operator the Facility, presently is complying with the provisions of RCRA, and the regulations promulgated thereunder, and the authorized PaHWR, that are referenced in this CA.

VII. COMPLIANCE ORDER

82. Within sixty(60) days of the date of the effective date of this CAFO:
- a. Provide a photograph to EPA demonstrating that the 1000 gallon waste solvent above-ground tank identified above in Paragraph 16 of this CA has been labeled with the words "Hazardous Waste";
 - b. For the most recent completed month, provide to EPA a copy of the daily inspection tank log for the 1000 gallon waste solvent above-ground tank identified in Paragraph 16 of this CA that meets the requirements of 40 C.F.R. § 264.195(d), as incorporated by reference into 25 Pa. Code § 264a.1;
 - c. Provide to EPA photographs demonstrating that the two ball float valves and two open-ended pump-out lines identified in Paragraph 38 of this CA have been marked in such a manner that they can be distinguished from other pieces of equipment as required by 40 C.F.R. § 264.1050(d), as incorporated by reference into 25 Pa. Code § 264a.1;

- d. For the most recent completed month, provide to EPA monthly monitoring results for the two ball float valves identified in Paragraph ³⁶38 of this CA as required by 40 C.F.R. § 264.1057(a), as incorporated by reference into 25 Pa. Code § 264a.1;
 - e. Provide to EPA a copy of the section of the Facility operating record that contains the information required by 40 C.F.R. § 264.1064(b)(1), as incorporated by reference into 25 Pa. Code § 264a.1, for the two ball float valves and two open-ended pump-out lines identified in Paragraph ³⁶38 of this CA; and
 - f. Provide to EPA a copy of the most recent Land Disposal Restriction ("LDR") Notification for hazardous waste filters (F008) identified in Paragraph 66 of this CA.
83. Within one hundred and fifty (150) days of the date of the effective date of this CAFO provide to EPA documentation that demonstrates that annual refresher hazardous waste training has been provided to its Facility personnel within the past twelve months as required by 40 C.F.R. § 264.16(c), as incorporated by reference into 25 Pa. Code § 264a.1.

VIII. NOTIFICATION AND REPORTING

84. Submission to EPA of Compliance Order reports and any other information, or documents pursuant to this CAFO shall be provided to the following persons via certified mail, return receipt requested, first class mail, overnight mail (Express or priority), hand-delivery or any reliable commercial delivery service:

James Heenehan
Sr. Assistant Regional Counsel
Office of Regional Counsel (3RC30)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

and

Stacie Peterson
Environmental Engineer
RCRA Compliance and Enforcement Branch (3WC31)
Waste and Chemicals Management Division
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103

IX. RESERVATION OF RIGHTS

85. This CAFO resolves only EPA's claims for civil monetary penalties for the specific violations alleged in Section II ("Findings of Fact and Conclusions of Law") herein. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO following its filing with the EPA Regional Hearing Clerk.

X. PARTIES BOUND

86. This CAFO shall apply to and be binding upon the EPA, the Respondent and its officers, directors, employees, successors, agents and assigns.

XI. EFFECTIVE DATE

87. The effective date of this CAFO is the date on which the FO, signed by the Regional Administrator of EPA Region III, or his designee, the Regional Judicial Officer, is filed with the EPA Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

XII. ENTIRE AGREEMENT

88. This CAFO constitutes the entire agreement and understanding of the parties regarding settlement of all claims pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the parties other than those expressed in this CAFO.

XIII. EXECUTION

89. The person signing this CA on behalf of the Respondent acknowledges and certifies by

his/her signature that he/she is fully authorized to enter into this CA and to legally bind Powerex, Inc., to the terms and conditions of this CAFO.

For Respondent, Powerex, Inc.:

Date: _____

By: _____
Stanley R. Hunt,
President

For Complainant:

Date: _____

By: _____
James Heenehan
Senior Assistant Regional Counsel

Accordingly, I hereby recommend that the Regional Administrator, or his designee, the Regional Judicial Officer, issue the attached Final Order.

Date: _____

By: _____
James N. Webb
Associate Director for Enforcement
Waste and Chemicals Management Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In Re:

**Powerex, Inc.
200 East Hillis Street
Youngwood, Pennsylvania 15697**

Docket No. RCRA-03-2006-0265

RESPONDENT

FINAL ORDER

Complainant, the Associate Director for Enforcement, Waste and Chemicals Management Division, U.S. Environmental Protection Agency - Region III, and Respondent, Powerex, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22, with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Having determined, based on the representations of the parties in the Consent Agreement, that the penalty assessed herein is based upon a consideration of the factors set forth in Section 3008(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6928(a), which include the seriousness of Respondent's violations and any good faith efforts to comply with its regulatory obligations, EPA's October 1990 RCRA Civil Penalty Policy, and the Consolidated Rules of

Practice, IT IS HEREBY ORDERED that Respondent pay a penalty of THIRTY THOUSAND DOLLARS (\$30,000.00), in accordance with the foregoing Consent Agreement. Payment shall be made in the manner set forth in the foregoing Consent Agreement. Payment shall reference Respondent's name and address as well as the EPA Docket Number of this Final Order (Docket No. RCRA-03-2006-0265).

The effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Date: _____

Renée Sarajian
Regional Judicial Officer
U.S. EPA, Region III